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Speakerphone Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ROBERT JONES,

4 Plaintiff,

New York, N.Y.

5 v.

14 Civ. 6402 (KPF)

6 JAMES MEEHAN, et al.,

7 Defendants.

8 -----x

9 October 28, 2016
12:15 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13 APPEARANCES (via speakerphone)

14 ROBERT JONES

15 Plaintiff *pro se*

16 NEW YORK CITY LAW DEPARTMENT

Attorneys for Defendants

17 BY: MARIA FERNANDA DECASTRO

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(In chambers; speakerphone call connected)

THE COURT: All right. Good afternoon. This is Judge Failla. This is the case of Jones v. Meehan, originally filed as Jones v. Bloomberg.

Mr. Jones, do I have you on the line, sir?

MR. JONES: Yes, I am, your Honor.

THE COURT: OK. Great. Thank you.

Ms. Decastro, do I also have you on the line?

MS. DECASTRO: Yes, your Honor. Good afternoon.

THE COURT: Good afternoon. And thank both for participating.

Ms. Decastro, because I will otherwise forget, can I ask you, please, to be obtain a transcript of this conference at its conclusion in the ordinary course?

MS. DECASTRO: Yes, your Honor.

THE COURT: Thank you so much.

All right. So what I understand is the following. There were -- as a result of a prior telephone conference that we had had, Mr. Jones had asked for leave to file some interrogatories. He had some questions he wanted answered in light of the discovery he had received. He thereafter submitted a number of interrogatories, and I have received both those interrogatories and the defendants' objections to them. What I would like to do is to go through each of these with you. Some of these I will need to ask each of you some

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1 questions about. Some of them I might not need to ask you
2 questions about. So, let me please begin.

3 First of all, Ms. Decastro, do you have a copy of your
4 interrogatory responses?

5 MS. DECASTRO: The objections, yes. Yes.

6 THE COURT: Yes. Responses and objections, I consider
7 them to be both.

8 MS. DECASTRO: Yes.

9 THE COURT: OK. And, Mr. Jones, do you have a copy of
10 your interrogatories, sir?

11 MR. JONES: Yes, I do, your Honor.

12 THE COURT: Do you also, sir, have a copy of Ms.
13 Decastro's objections and responses to them?

14 MR. JONES: I also have a copy of those, yes.

15 THE COURT: Great. So when I'm speaking about an
16 interrogatory, if I just use the number, you will know what I
17 am talking about.

18 Beginning with the first of these, I'm understanding
19 the inquiry to be whether those individuals were in fact NYPD
20 police officers during the period January 25th through
21 January 27th of 2012.

22 Ms. Decastro, is that how you understood the question?

23 MS. DECASTRO: I didn't really understand the
24 question, but if that's the case, then, yes. If that's the
25 question, then we are fine with answering that.

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1 THE COURT: OK. Mr. Jones, in your interrogatory 1,
2 were you trying to confirm that these individuals using these
3 tax ID or shield numbers were employed as NYPD personnel, be it
4 officers or detectives, on the dates in your interrogatory?

5 MR. JONES: That was the objective, yes, your Honor.

6 THE COURT: Then that is an objective you will have.
7 And, Ms. Decastro, the answer is "yes," is that
8 correct?

9 MS. DECASTRO: That these individuals were -- yes.
10 Yes.

11 THE COURT: OK. Then the answer is "yes." OK.

12 For the issue or for interrogatory number 2, Ms.
13 Decastro, I am going to ask you just to provide the amount of
14 time they were employed by the NYPD as of January 27th of 2012.
15 I don't want their employee stature or job description. I just
16 want you to find out, please, how long they had been with the
17 department as of the date of the incidents in this case.

18 MS. DECASTRO: Sure. Of course, your Honor.

19 THE COURT: OK. With respect to interrogatory 3 and
20 interrogatory 4, which request commercial bonds or contracts, I
21 don't think such things exist, and I am not going to order
22 their production because they are irrelevant to the issues in
23 my case.

24 With respect to interrogatory 5, this is just asking
25 whether there is a contract between the Police Department and

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1 the citizens of the City of New York to serve and protect.

2 This relates somewhat to interrogatory number 6.

3 Ms. Decastro, when police officers become police
4 officers, is there an oath that they swear?

5 MS. DECASTRO: I believe that there is, your Honor,
6 but I don't know if it is something written down but I believe
7 that there is.

8 THE COURT: All right. I suspect that you can find
9 the oath, and if there is a common one that is given or if you
10 want to note that this is a typical oath that is given, if you
11 could just please have that memorialized in writing and
12 produced to Mr. Jones, all right?

13 MS. DECASTRO: Your Honor, just to get a little bit of
14 clearness on this issue?

15 THE COURT: Of course.

16 MS. DECASTRO: Do you want me to have the oath that is
17 given -- because I am not sure if it is given every year.

18 THE COURT: I understand that completely. If you can
19 find -- I mean, for example, the oath that I take as a judge is
20 the same oath that everybody else takes as a judge. The oath
21 that I took as a prosecutor is the same oath that people have
22 been taking for decades before me. It is my suspicion that the
23 oath administered to NYPD officers has not changed markedly or
24 substantively since these folks were first employed.

25 On that assumption, I'm asking you to produce -- if

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1 you can find -- the most recent oath you can find, what you can
2 find now.

3 MS. DECASTRO: OK.

4 THE COURT: All right. And that also covers 6.

5 With respect to 7 --

6 Let me just look at this again.

7 (Pause)

8 -- Mr. Jones, are you asking in interrogatory 7 about
9 whether the city would be liable for the conduct of these
10 officers?

11 MR. JONES: Yes. That's primarily the question, your
12 Honor.

13 THE COURT: All right. I mean, here's the thing.
14 When it comes to issues of law, it's my preference that you not
15 get your legal instruction from your adversary. So I
16 understand, sir, that you will be eventually making an argument
17 to me that the city should be liable for what these folks did,
18 and I think it's fair to say that there are circumstances under
19 which they might be, but I don't think it is appropriate to
20 have them tell you if they are. So I would not -- I am going
21 to leave the law for later, for you to argue to me and me to
22 decide for you. All right, Mr. Jones?

23 MR. JONES: OK. I understand, Judge.

24 THE COURT: Thank you, sir.

25 With respect to interrogatory number 8, which goes to

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1 CCRB matters, I have a recollection, Ms. Decastro, that there
2 was a certain -- perhaps a release that you wanted Mr. Jones to
3 sign in that regard?

4 MS. DECASTRO: Yes, your Honor. I sent him the
5 stipulation of confidentiality, and Mr. Jones sent me an
6 objection back to the stipulation and did not sign the
7 stipulation.

8 THE COURT: OK. Mr. Jones, what are you objecting to?
9 I think I understand the confidentiality stipulation to be so
10 that these materials could be used only in this case and not
11 shared with all of your friends. What is your objection to the
12 stipulation that was sent, sir?

13 MR. JONES: Well, my objection was is that it might
14 limit the scope of information that I might be otherwise --
15 otherwise to be -- to be -- to -- otherwise -- I'm sorry.

16 THE COURT: Do you mean to say, sir, it might limit
17 the information you would otherwise be entitled to?

18 MR. JONES: Exactly, yes.

19 THE COURT: All right. Let's do it this way, then.
20 Assuming you sign the confidentiality stipulation, Ms.
21 Decastro, I am going to ask you for the following: If there is
22 CCRB reports regarding the officers listed in these
23 interrogatories or if there are disciplinary reports regarding
24 these officers, I would ask you, please, to produce them to me
25 in camera, and you may copy the enclosure letter to me -- to

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1 Mr. Jones so that he knows that's what I'm doing. I will look
2 at them and I will see if any of them -- or the degree to which
3 these materials, if any exist, should be produced to Mr. Jones.

4 Ms. Decastro, does that make sense?

5 MS. DECASTRO: Yes, your Honor. Just one quick note.
6 I had previously sent to you the CCRB reports.

7 THE COURT: OK.

8 MS. DECASTRO: You had made a decision on those, but I
9 can look for disciplinary reports to send those to your Honor
10 for review.

11 THE COURT: That would be terrific. Thank you for
12 reminding me. I have done a couple of in-cameras lately. You
13 will excuse me for forgetting yours was one of them.

14 MS. DECASTRO: Yes. That's OK.

15 THE COURT: OK. Thank you.

16 All right. Interrogatory number 9. Ms. Decastro,
17 have any of these individuals testified at a proceeding
18 involving Mr. Jones?

19 MS. DECASTRO: I believe that they have testified at a
20 proceeding that was in the Grand Jury.

21 THE COURT: OK. Were any of these materials produced
22 as part of your earlier documentary productions to Mr. Jones?

23 MS. DECASTRO: No, your Honor. The Grand Jury
24 testimony is sealed. We do not have a copy of that. In order
25 to get a copy of that, we would have to get those records

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1 unsealed my understanding is in state court and then they could
2 get unsealed.

3 THE COURT: OK. Mr. Jones, I don't reflexively order
4 Grand Jury disclosure. So, sir, if you want those disclosed, I
5 am going to ask you, please, to make an application to me about
6 why they should be. All right, sir?

7 MR. JONES: OK. Your Honor, if I may?

8 THE COURT: You may.

9 MR. JONES: The request -- the statement that I had
10 made therein was pertaining to a proceeding that had taken
11 place during my trial and I was acquitted. If this was the
12 case that had nothing to do with the case at chief, the case
13 that is being argued now --

14 THE COURT: OK.

15 MR. JONES: -- the detectives had given testimony, and
16 I received part of the transcript from the complainant's
17 testimony and from the forensic pathologist, but I didn't get
18 the testimony regarding the detective and what he testified to.
19 And that was detective Joe Corillo, if I am pronouncing that
20 correct.

21 THE COURT: Criollo.

22 MR. JONES: Criollo, OK.

23 MS. DECASTRO: Your Honor, if I may?

24 THE COURT: Yes. And, actually, that is going to make
25 me amend my prior discussion about Grand Jury testimony,

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1 because I am reading this interrogatory more carefully and it
2 does not speak to Grand Jury testimony.

3 So, Ms. Decastro, yes, I will hear from you now.

4 MS. DECASTRO: Yes, your Honor. In the matter that
5 Mr. Jones is suing on now, the case that is before us, the
6 criminal case, that case was dismissed on 30.30 grounds, speedy
7 trial grounds.

8 THE COURT: Yes.

9 MS. DECASTRO: And there was no formal proceeding.
10 But that is the Grand Jury that they would have testified in.

11 I think Mr. Jones is saying that he had another
12 robbery case that he may have been acquitted or convicted on,
13 I'm not exactly sure, and maybe he means that somebody
14 testified in that proceeding, but in this case my
15 understanding, there was no testimony except the Grand Jury
16 testimony.

17 THE COURT: OK. And, Mr. Jones, let me confirm your
18 understanding of that. Is what you are asking for the
19 materials relating to another involvement that you had with the
20 New York criminal justice system?

21 MR. JONES: Yes, it was a separate case. The case
22 that involved after the initial case, which was the 2012 case,
23 there was a 2013 case where I had gone to trial and I was
24 acquitted. I guess one of the detectives that was the lead
25 detective in the previous case had given testimony during that

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Speakerphone Conference

1 trial proceedings, and he was -- he also gave testimony that
2 was transcribed, and those transcripts weren't made available
3 and I believe that they should have so that I could have at
4 least halfway been able to examine what he actually said during
5 the trial proceedings.

6 THE COURT: All right. But let me understand this,
7 sir. Your complaint before me relates to the 2012 matter; is
8 that not correct?

9 MR. JONES: That is correct, your Honor.

10 THE COURT: OK. And what you indicate is that there
11 were problems with the search warrant and therefore problems
12 with your arrest and therefore problems that led to the
13 deprivation of medical treatment. Why does it matter for my
14 case what Officer Criollo testified to in an unrelated robbery
15 case?

16 MR. JONES: Well, I was under the pretense that this
17 would help me to be able to establish some active role that he
18 played in the investigation, because this was two separate
19 cases but yet he participated in both cases as far as being the
20 lead detective and he was the only detective -- excuse me --
21 that gave testimony, so I was under the impression that that
22 might somehow give me some insight or some clarity as to this
23 particular detective and how he participated in my -- in the
24 development of my criminal case.

25 THE COURT: All right. It would be my expectation

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Speakerphone Conference

1 that any testimony he gave in 2013 would not have related to
2 what happened in 2012.

3 Ms. Decastro, are you in a position to see what
4 statements were made by Officer -- or I don't know what
5 designation he holds -- of Criollo in the 2013 case regarding
6 the 2012 case?

7 MS. DECASTRO: No. Unfortunately, I am not. In
8 order -- if plaintiff was acquitted, in order to even get those
9 transcripts we would have to get a new release for the release
10 of the minutes of that trial because they would be sealed under
11 160.51-160.55 and it would be very costly to order that
12 transcript.

13 If Creole, as Mr. Jones is saying, was involved, it is
14 probably because he is a robbery detective that works out of
15 Midtown North, so there could have been another robbery or
16 burglary I think that was picked on that he was also involved
17 in. I do not have right now access to any of those
18 transcripts.

19 THE COURT: OK. Then I will not order it. I am going
20 to move to interrogatory, let's see, number 10.

21 Ms. Decastro, was there DNA that was tested or
22 collected from the plaintiff?

23 MS. DECASTRO: There was DNA that was collected from a
24 cup I believe that plaintiff used at the precinct, and
25 plaintiff has the DNA reports and everything from -- they were

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Speakerphone Conference

1 included in the District Attorney's file that I turned over to
2 plaintiff.

3 THE COURT: OK. But I think what I'm understanding is
4 because it was from a cup from which he drank at the precinct,
5 there was no authorization to test that cup, is that correct?

6 MS. DECASTRO: Yes. That's my understanding. I can
7 confirm with my clients but that is my understanding.

8 THE COURT: All right. He's asking for an
9 authorization. I think you are telling me none exists?

10 MS. DECASTRO: Yes, I don't believe that any exist.

11 THE COURT: OK. Obviously if you find in your travels
12 that one exists, you will produce it to him.

13 All right. For number 11, Mr. Jones, I think I need
14 your assistance with this. Are you saying that you believe
15 they entered your home because of the use of something that
16 gave them GPS tracking data?

17 MR. JONES: Yes, your Honor, that's exactly what I'm
18 saying. According to documents that I recently uncovered, that
19 they were required to get an order for eavesdropping and GPS
20 cell site warrant pertaining to that particular laptop, and
21 they were also required to get affidavits from the county
22 district attorney's office in order to execute that. Because
23 it seems here that that particular procedure constitutes a
24 search, because there was no way that the officer could have
25 located the area precisely and that he, upon using this

Gasdjonc

Speakerphone Conference

1 hand-held device, was able to zero in on a particular signal.
2 Once he came closer to it, I guess the register would increase.
3 And then when he entered the home, unannounced -- and I wasn't
4 aware that he was there -- he walked up a flight of stairs
5 inside of the dwelling and he pointed the device at that
6 particular object and it gave a positive reading, and he didn't
7 question me, he didn't have any conversation with me, and then
8 he left. And then when he returned -- the following day he had
9 filed for a warrant, a search warrant in order to execute the
10 search for that particular item that he had -- which had
11 registered on this handheld device.

12 THE COURT: OK. Mr. Jones, I am going to stop you for
13 a moment. I know later on in your interrogatories you ask
14 questions about Triggerfish or other locating devices, so I
15 think all of these questions are of apiece, they are all
16 similar. What I am understanding you to be saying is knowing
17 that there was a search warrant application, you would like to
18 see if there was any documentation for the GPS devices, like a
19 Triggerfish, that might have been used in establishing probable
20 cause for the search warrant; is that correct, sir?

21 MR. JONES: That is correct, your Honor.

22 THE COURT: OK. Ms. Decastro, do you know from your
23 investigation what it is, if anything, that the officers used
24 prior to obtaining the search warrant?

25 MS. DECASTRO: Your Honor, from my investigation, the

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Speakerphone Conference

1 laptop that Mr. Jones alleges it was used to track him, that
2 laptop was stolen from somebody in a burglary and that person,
3 whoever -- I'm not going to speak to the complaining victim's
4 name, by that person would have given the officers
5 authorization to do something like a Find My Phone, Find My
6 Laptop, saying they are the person that would give the consent.
7 Officers don't need -- they don't need a warrant if they have
8 the consent of the complainant to track their property.

9 THE COURT: I understand that. Let me ask you a
10 couple of follow-up questions.

11 MS. DECASTRO: Yes.

12 THE COURT: When someone gives consent, are they
13 required to do it in writing? Is there some sort of NYPD form
14 that must be filled out to find one's computer or find one's
15 phone?

16 MS. DECASTRO: I'm not sure, your Honor. I can look
17 into that. But what I do know is that all of the documents
18 that are in this case, I've turned over the whole detective
19 file and the whole District Attorney file to Mr. Jones. I
20 haven't seen that in there, but I can confirm whether it has to
21 be a written consent. But I don't -- I don't believe that it
22 has to be, that it is a situation where it needs to be written
23 consent. The complaining victim needs to report to the police
24 that the item is missing and that they would like it recovered,
25 but I can confirm.

Gasdjonc

Speakerphone Conference

1 THE COURT: Please do, and thank you very much.

2 And as a result of -- and I'm understanding from your
3 answer to me earlier that I'm not going to find a Triggerfish
4 application because that wasn't what was used here. What was
5 used was something based on the Find My Phone functionality of
6 the MacBook; is that correct.

7 MS. DECASTRO: It was something like that, yes. That
8 is my understanding. I can confirm all of this and respond to
9 things relating to plaintiff's request, or one of the
10 interrogatory requests.

11 THE COURT: All right. And, I mean, the one we're
12 looking at is interrogatory 11, but I know it touches as well
13 on some of the other ones and you will see them as you go
14 through them.

15 With respect to interrogatory number 12, if there is a
16 disciplinary proceeding, you may produce the materials to me in
17 camera.

18 With respect to interrogatory 13 and 14 and 15, yes --
19 and, yes, 13, 14 and 15, what's being sought here are the
20 individual officers who were involved. Ms. Decastro, is it
21 your position that the materials that you have produced in the
22 police file and the DA's office file contain that information
23 to the extent it is ascertainable?

24 MS. DECASTRO: Yes, your Honor. That information is
25 all in those documents.

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Speakerphone Conference

1 THE COURT: OK. Let me look then at 16.

2 (Pause)

3 Mr. Jones, what is it that you are seeking in
4 interrogatory 16, please, sir? Do you just want confirmation
5 that he sought and obtained a search warrant?

6 MR. JONES: Well, I'm looking for confirmation that in
7 the initial contact that we were supposed to have had where he
8 sought some sort of authority to -- some sort of consent to
9 enter the home and after he -- under the pretense that he was
10 going to conduct an interview, which he failed to do, he took
11 the information that he obtained while in the home and he used
12 that information to help secure the search warrant by giving
13 the description of the location, which floor I occupied, what
14 was my living quarters status, which side of the room I had
15 slept on and those things, and that would have required a
16 search warrant for him to actually come and to do that.

17 THE COURT: OK. So, Mr. Jones, what you're saying is
18 you believe when the detective came by your home to interview
19 you, he was in fact using that as a pretext to get the
20 dimensions of your residence for a search warrant, correct?

21 MR. JONES: That's correct, and he never actually
22 conducted an interview. I never spoke with him. I never -- I
23 didn't even know that he had come by that particular day
24 because, according to him, he walked up a flight of stairs and
25 he observed me in my private quarters, in my bedroom, and I

Gasdjonc

Speakerphone Conference

1 was, quote-unquote, using this alleged MacBook Pro, and he was
2 able to verify that it was in fact the item that he had -- that
3 he had -- Lieutenant Rivera had been seeking.

4 THE COURT: OK. Here, sir, I think what you are
5 asking is for the defendants to agree that they operated as a
6 pretext. I think the better thing to do is the allegations or
7 the statements that Detective Hahn made are in his written
8 submissions. You are permitted to argue, just as you have now
9 argued to me, that these were pretextual, and the defendants
10 will argue that they were an appropriate investigative
11 technique. So there is no document to produce. I think this
12 is just something where each of you will take different
13 positions on the legality of the conduct.

14 And I feel the same way about interrogatory 17, and
15 let me look at 18. 18 is duplicative of 1, so I'm not going to
16 ask for that more. 19 is duplicative of 2 and 3, so I'm not
17 going to ask for more on that.

18 Number 20 is a situation where, again, Mr. Jones, you
19 are asking for them to agree with your legal conclusion, and
20 that's not really proper for an interrogatory. So you can make
21 the argument to me, sir, that this indictment was a consequence
22 or led to your 22 months of detention, but I'm not going to
23 have them agree or disagree that it was.

24 I will -- as to interrogatory number 21, that is a
25 legal proposition of the Fourth Amendment, which I will either

Gasdjonc

Speakerphone Conference

1 agree with, or not, at some later date, and you will take this
2 with the respect with which it is made. I don't think care
3 whether the defendants share your view of the Fourth Amendment;
4 ultimately, I get to decide that.

5 Similarly interrogatory number 22. Mr. Jones, let me
6 ask what you are seeking there? Are you trying to see whether
7 there was an extant warrant for your arrest?

8 MR. JONES: Yes, that and whether there were exigent
9 circumstances that required or that aided the officer in making
10 the decision to enter the home such as having some background
11 information that he could rely on that was accurate and that
12 gave him probable cause to believe that if he -- that if he
13 went to this particular location, that he would be able to find
14 the items that he had been looking for.

15 THE COURT: I see. It seems to me that he put all of
16 the facts that he thought were relevant in his submission, in
17 the complaint and in any search warrant application. So I'm
18 not -- if he had other things he wanted to say, he should have
19 said those in the complaint or the search warrant
20 application --

21 MR. JONES: Also, your Honor, if I may?

22 THE COURT: Yes, sir.

23 MR. JONES: Detective Robert Hahn is not a defendant
24 in this because I didn't place him in the caption as being a
25 defendant, and I only recently found out that he played such a

Gasdjonc

Speakerphone Conference

1 pivotal role in the development of this case. But neither him
2 nor Robert Haynes or Victor Lopez or -- yes, those three, they
3 are not actually defendants because I wasn't aware that they
4 played such a pivotal role and I didn't classify them as being
5 such, so I don't know how that works as far as my being able to
6 extract information from them.

7 THE COURT: OK. Well, let me give you my thoughts on
8 that.

9 One does not need to be a defendant in the case to be
10 a party from whom you can seek discovery. So even if they are
11 not defendants, if they have information that is relevant to
12 your case, I think you would still be permitted to obtain
13 discovery from them, and so that's not the problem. The issue
14 is what is the discovery that you are seeking?

15 Again, they have given you in the files that were
16 produced to you in paper discovery the information that they
17 told the courts. If it is your position that that information
18 is false, that's where you get to tell me. They don't now get
19 to supplement or to put before me what they did not put in the
20 complaint or in the search warrant application. So there is no
21 additional information for them to give you. It's for you to
22 tell me whether the information that they gave to whether the
23 magistrate judge or the court who would endorse or issue the
24 arrest warrant or search warrant, whether that was enough and
25 whether it was accurate. So you know what happened and you

Gasdjonc

Speakerphone Conference

1 know what they say happened, and you get to tell me whether
2 that was correct or not. All right, sir?

3 MR. JONES: All right. I understand, yes.

4 THE COURT: With respect to interrogatory 23, I'm not
5 going to invade privileged communications that might be present
6 here in terms of the CCRB responses. I've already looked at
7 the CCRB files, which I remembered to be quite complete, and if
8 there are disciplinary history files, I will get those, too.

9 With respect to interrogatory number 24, it seems to
10 me the City of New York can employ people who act as state
11 actors and who have the capacity to act under color of state
12 law. So I am not going to have the defendants confirm that.

13 With respect to interrogatory 25, I think if there was
14 consent, it ought to have been in the files produced, and if it
15 is not there, then it doesn't exist.

16 For interrogatory 26, again, you're asking for the
17 defendants to give legal conclusions. Those I get to give at
18 some point.

19 27 is the discussion we have had earlier about the
20 outline of the home for the warrant. And there is a reference
21 there to a Felix Rivera, and he seems to be the person aligned
22 with it.

23 28, Ms. Decastro, were these -- was there an
24 interrogation and was it videotaped?

25 MS. DECASTRO: My understanding is that there was no

Gasdjonc

Speakerphone Conference

1 interrogation. If plaintiff remembers sitting for an
2 interrogation, I can go back and make sure, but my
3 understanding is that there was no interrogation.

4 THE COURT: OK. Mr. Jones, do you have a recollection
5 otherwise?

6 MR. JONES: Yes, I do. There was an interrogation,
7 your Honor, because it was during that interrogation where the
8 DNA was extracted from the cup, and I was still in -- and I was
9 still under custodial detention during that time. So, yes,
10 there was. And it was actually 16 hours and I recall that.
11 Because of that, some sort of ploy had been used to restrict
12 access to water, and I had a serious medical condition whereas
13 my kidneys were affected by the lack of or the want of water
14 and the use of toilets, so that I do recall.

15 MS. DECASTRO: Your Honor --

16 THE COURT: Yes, Ms. Decastro.

17 MS. DECASTRO: -- given that he is saying that, I will
18 confirm and I will put it in writing whether there was or there
19 wasn't.

20 THE COURT: Perfect.

21 MS. DECASTRO: And whether there was any video.

22 THE COURT: That is very useful. Thank you very much.

23 For interrogatory 29, that goes back to our earlier
24 discussions about whether there is written authorization
25 regarding the MacBook, so I think that would be responsive.

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Speakerphone Conference

1 Interrogatory 30 should be indicated in the file so I
2 won't have a separate interrogatory for it.

3 Interrogatory 31, there are questions about what one
4 does after execution of a warrant. Ms. Decastro, I guess my
5 view is if there were forms that should have been completed,
6 such as inventory forms or things of that nature, they would be
7 in one of the two files that you produced; is that correct?

8 MS. DECASTRO: Yes. There are numerous property
9 vouchers and other NYPD vouchers that were produced. They are
10 a part of the file that were disclosed to Mr. Jones.

11 THE COURT: Let me ask a broader question. Are there
12 any of these administrative paper -- you know, post-search
13 warrant or post-arrest warrant paperwork that would not be
14 produced or not be contained in these files?

15 MS. DECASTRO: The only thing I can think of would be
16 the search warrant affidavit that usually also is not produced
17 to us by the District Attorney's office, it's sealed. That
18 would be the only thing that I can think of. But anything else
19 would be a part of the detective file that was sent to
20 Mr. Jones and a part of the District Attorney file that was
21 sent to Mr. Jones.

22 THE COURT: OK. Ms. Decastro, I'm not going to ask
23 you to go double-check everything that you have done so far. I
24 am simply noting that Mr. Jones and I expect that if something
25 is not in those folders, it's not because it has been misfiled,

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Speakerphone Conference

1 it is because it never existed. Is that a fair assumption for
2 us to make?

3 MS. DECASTRO: Yes, that is a fair assumption to make.

4 THE COURT: OK. And that is the assumption under
5 which we'll proceed. If it is not there, it doesn't exist.

6 MS. DECASTRO: Sorry, your Honor. Just with the
7 exception of the search warrant affidavit and anything related
8 to the Grand Jury.

9 THE COURT: Of course, and those are sealed matters,
10 yes.

11 MS. DECASTRO: OK. Sorry. Just to clarify.

12 THE COURT: No. No. No. And it is an appropriate
13 clarification, and we all now share that same understanding.

14 With respect to 32, interrogatory 32 is more forms.
15 If they are not there, then they are not there.

16 Let me understand, Mr. Jones, your interrogatory
17 number 33, please.

18 MR. JONES: OK. After the search warrant, the officer
19 who applied for the search warrant was required to inform the
20 investigation liaison unit and identify himself and identify
21 the procedures that had taken place. And there was a form,
22 referred to as a UF-49 Form, and it should have been prepared
23 in all cases and faxed to the -- to the Intelligence Division.
24 According to the paperwork that I had, no such approval,
25 because they had -- after 60 days they were still making their

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Speakerphone Conference

1 requests and informing or sending those to the officer, the
2 detective, that this form has to be filled out anytime there is
3 a search warrant executed. So I don't recall seeing that
4 particular document among those that were sent.

5 THE COURT: OK. Ms. Decastro, would you please look
6 into the existence of a UF-49 Form, and do you know what
7 Mr. Jones is speaking of with respect to that?

8 MS. DECASTRO: No, I don't, your Honor. I don't know
9 about -- this is the first time I'm hearing about somebody
10 having to notify the investigation liaison unit about
11 post-search warrant executions, but I now will confirm to make
12 sure that no such thing exists and I will provide information
13 to Mr. Jones and the Court about that.

14 THE COURT: That's really -- that's all I am going to
15 ask you to do. I thank you very much, because this is the
16 first time I'm hearing of it as well, but it may be that
17 Mr. Jones, you know, is teaching us both something about
18 something that should be either in these folders or readily
19 accessible. So let's find out that because that is fair.

20 Interrogatory 34 speaks to the same form.

21 Let me look. Interrogatory 35. Now, let me
22 understand, is there -- I guess Mr. Jones is asking for a form,
23 if there is such a form, regarding the sealing of the files
24 post dismissal of the Indictment. Does such a form exist?

25 MS. DECASTRO: The only thing I can think of is the

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1 certificate of disposition from the Criminal Court. Sometimes
2 they are sealed, but besides that I don't believe any other
3 form exists --

4 THE COURT: All right.

5 MS. DECASTRO: -- in an instance like that.

6 THE COURT: Would that have been included in the DA's
7 office file?

8 MS. DECASTRO: It usually is. I will verify. If not,
9 we will ask for a certificate of disposition to produce to
10 Mr. Jones.

11 THE COURT: Thank you very much.

12 All right. With respect to 36, I guess it is the same
13 question. Was this stuff -- this returned or destroyed? I
14 don't know that there is an obligation. I don't know that it
15 exists in the manner described in interrogatory 36.

16 Ms. Decastro, do you have some insight into that?

17 MS. DECASTRO: My understanding is that the records
18 are not destroyed. They are kept and they are kept and they
19 are not released to anyone unless there is an unsealing order
20 or unsealing release from the individual whose criminal matter
21 was sealed.

22 THE COURT: OK. All right.

23 MS. DECASTRO: I don't believe that the records are
24 destroyed because I think we have a duty to preserve such
25 records, as the City of New York and as the state -- as the

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Speakerphone Conference

1 Supreme Court of the State would have a duty to preserve those
2 records.

3 THE COURT: All right. We have the same obligations
4 on the federal side, so I am not going to ask for more on that.

5 It is my belief that interrogatory 37 is encompassed
6 by the DA's office file and/or the investigative file, as
7 possibly supplemented by anything, Ms. Decastro, you may find
8 in your questions after this conference. So if you find
9 anything that's responsive to interrogatory 37, I am asking
10 you, please, to turn that over.

11 With respect to interrogatory 38, this is another
12 legal question. The documents in the respective files that
13 have been produced to Mr. Jones indicate who spoke with him and
14 when and whether or not these constitute interviews or
15 questionings I think is something for me to determine at a
16 later date.

17 39 is a legal issue that we're not going to address in
18 this context.

19 40 is a question about the Find My Phone
20 authorization, which we've spoken about already.

21 41 is an inquiry into a Stingray or Triggerfish or
22 Hailstorm. I'm now told -- and Ms. Decastro will let me know
23 if at any point I am wrong -- that what was used was something
24 akin to a Find My Computer/Find My Phone functionality in
25 Apple.

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Speakerphone Conference

1 Interrogatory 42, Ms. Decastro, is there a written
2 directive or policy regarding medication or medical conditions
3 and how one deals with individuals who are being detained or
4 being questioned who may have medical issues?

5 MS. DECASTRO: Yes, your Honor.

6 THE COURT: Has that been produced?

7 MS. DECASTRO: That has not been produced.

8 THE COURT: Could you please produce it to Mr. Jones.

9 MS. DECASTRO: Yes, your Honor. The only thing I
10 would ask, if it can be produced subject to the protective
11 order once it is signed?

12 THE COURT: That is very fair. Mr. Jones, once you
13 sign the protective order, that will be produced. All right,
14 sir?

15 MR. JONES: Understood.

16 THE COURT: Thank you.

17 All right. Interrogatory 43 again speaks about the
18 MacBook Pro. I think that is going to be resolved in other
19 ways.

20 The same with interrogatory 44.

21 Interrogatory 45, if those things, Stingray or
22 Hailstorm or Triggerfish were not used, then there is nothing
23 to produce.

24 The same for interrogatory 46.

25 So, those are the interrogatories.

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Speakerphone Conference

1 Ms. Decastro, recognizing that I've just given you a
2 bunch of things to do, let me ask you for your best estimate of
3 a reasonable amount of time -- I'm emphasizing in my mind the
4 word "reasonable" -- how much time you need to get these
5 materials and produce them to Mr. Jones?

6 MS. DECASTRO: Yes, your Honor. I would ask for at
7 least 30 days. I, unfortunately, have many cases that are in
8 the midst of discovery depositions in the coming days and next
9 month, and that would allow me some time to speak to my clients
10 again and speak to the NYPD and get all the relevant and
11 necessary documents, if any.

12 THE COURT: OK. Well, let me say this. I am one of
13 those people who doesn't like extensions, so I am going to give
14 you until the 5th of December to produce whatever you need to
15 to Mr. Jones with the understanding that that will be all the
16 time I'm going to give you. All right?

17 MS. DECASTRO: Yes. Thank you, your Honor.

18 THE COURT: OK. And thank you.

19 And then, Mr. Jones, you will have that material.

20 I think the next stage, then, is dispositive motion
21 practice, but are we in a position now to talk about that or do
22 we want to have -- I can set a schedule today for dispositive
23 motion practice.

24 Mr. Jones, you indicated to me that you wish to file a
25 summary judgment motion. Do you still, sir?

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Speakerphone Conference

1 MR. JONES: Yes, your Honor. In fact, I had been
2 preparing for that over the last few weeks. The only dilemma
3 that I have is that the requirements that all interrogatories
4 and submissions be fully developed before summary judgment
5 could be actually executed.

6 THE COURT: Of course. So when you get these
7 materials from Ms. Decastro, you will be able to fill in
8 whatever gaps are in your current draft; is that correct, sir.

9 MR. JONES: This is correct, your Honor.

10 THE COURT: And, sir, could you tell me while we are
11 on this call what you contemplate your grounds for summary
12 judgment being?

13 MR. JONES: The grounds for summary judgment would be
14 based on the unlawful entry by the detective on the 25th and
15 how everything else that followed that unlawful entry was fruit
16 of the poisonous tree and that I should have been entitled
17 to -- in the criminal prosecution I should have been entitled
18 to hearings so that the case could be fully adjudicated and
19 fully developed so that I would be able to have some record of
20 clarity as to what needed or what happened and/or what was
21 preserved for review by either a civil court or appellate
22 court.

23 THE COURT: All right. But, Mr. Jones, without doing
24 the research into the issues that you have just identified for
25 me, what I understand summary judgment to exist for is to exist

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Speakerphone Conference

1 in the situation where the facts are not in material dispute --
2 there is no big dispute about the facts -- and they entitle you
3 to judgment as a matter of law. You win because the facts are
4 in your favor and there is no real dispute about them. Here,
5 however, even in our conversation I'm hearing a lot of disputes
6 about whether or not a person identified the MacBook Pro as
7 something that had been stolen, whether or not the officers
8 used that. That to me sounds more like something that should
9 have to be addressed at trial. Do you think that there are no
10 factual disputes that matter in this case, sir?

11 MR. JONES: Well, there are factual disputes that may
12 matter, but I'm also under the impression that these things
13 could be resolved through the interrogatory stages or the
14 discovery disclosure and that by the time the case ripens for
15 the purpose of summary judgment, that all of these cases will
16 be -- all of the issues will be resolved and it will be
17 clean-cut and that there will be nothing left to litigate as to
18 the facts of the case.

19 THE COURT: OK. Sir, that may be the case. I'm just
20 saying that based on everything I have heard in this
21 conversation, I think both sides might have a -- if you will
22 excuse the expression -- a tough row to hoe in trying to figure
23 out -- in trying to get summary judgment.

24 Ms. Decastro, is it your clients' position that they
25 also want summary judgment practice?

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Speakerphone Conference

1 MS. DECASTRO: Yes, your Honor.

2 THE COURT: On everything or partial?

3 MS. DECASTRO: The only thing I would think that would
4 maybe survive summary judgment would be a motion on the denial
5 of medical treatment claim that plaintiff has.

6 THE COURT: That's what I'm thinking as well. OK.

7 MS. DECASTRO: Deliberate indifference to the medical
8 treatment, but everything else, it is our belief that there
9 aren't material issues of fact that would necessitate going to
10 trial on the false arrest and false prosecution and the
11 unlawful search and entry.

12 THE COURT: OK. Now, this is me as a human being and
13 not as a judge. Is there any chance of this case settling
14 short of summary judgment practice or short of trial?

15 Ms. Decastro.

16 MS. DECASTRO: Well, your Honor, I have not received a
17 demand from plaintiff. If plaintiff wants to give me a demand,
18 I would bring it back to my client with -- you know, explaining
19 that there is this denial of medical treatment matter that may
20 proceed to a trial. So it is a possibility. I am not going to
21 say it is not a possibility without talking to my client. So
22 if he were to give me a demand, I can explore that.

23 THE COURT: Mr. Jones, if that's something you want to
24 do, don't do it now while I'm on the phone, but you can
25 communicate with Ms. Decastro and let her know what the demand

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Speakerphone Conference

1 is. All I'll say, sir, is like if your demand is in the
2 million-dollar range it's probably going to fail at the start.
3 But if you want at any point to have settlement negotiations
4 with Ms. Decastro and her clients, you know how to do that,
5 sir, correct?

6 MR. JONES: That is correct, your Honor.

7 THE COURT: OK. Fine.

8 What I'll do, then, is I am going to put in the order
9 that I will issue today or Monday the December 5th date as the
10 date by which these remaining issues are to be resolved by the
11 defendants. I will put in a briefing schedule. I am very
12 likely to put in a briefing schedule that has summary judgment
13 practice that involves four briefs rather than six. Basically,
14 you each want to make a motion, but rather than having you make
15 a motion at the same time as your adversary, I think what I'm
16 going to do is have Mr. Jones make his motion, have Ms.
17 Decastro respond to his motion and in the process make her
18 motion, and then have Mr. Jones get the last word on his motion
19 and Ms. Decastro have the last word on hers. So it's four
20 briefs rather than six. I'll set up in there the page limits
21 and the amount of time.

22 And, Ms. Decastro, you'll understand that because
23 Mr. Jones is *pro se*, I'd ask you, please, to give him copies of
24 any case cited in your briefing.

25 MS. DECASTRO: Yes. Of course, your Honor.

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Speakerphone Conference

1 THE COURT: Thank you so much.

2 All right. So, Mr. Jones, do you understand what I
3 have just said about the scheduling that I would like to do?

4 MR. JONES: Yes, your Honor, I do.

5 THE COURT: OK. Because I would rather have you write
6 two things than three. Are you OK with that, sir?

7 MR. JONES: Yes, that's quite fine.

8 THE COURT: OK. Great. You will see that scheduling
9 order in the next couple of days.

10 Thank you both for participating in this call. I
11 think it was very, very productive, and I thank you for being
12 both so well prepared for it.

13 Have a good weekend to both of you. Thank you.

14 MS. DECASTRO: Oh, your Honor, if I may just quickly?
15 I apologize.

16 THE COURT: No, that is fine.

17 MS. DECASTRO: The remaining issue that we have in
18 terms of discovery from plaintiff is we have had a very
19 difficult time getting plaintiff's medical records from Horizon
20 Health. We've gotten dates that do not match even though
21 plaintiff gave us the right, appropriate date range, but the
22 problem is I believe he had a different booking case number
23 before the year 2015, and that may be what's holding up the
24 medical records.

25 THE COURT: OK.

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Speakerphone Conference

1 MS. DECASTRO: Both Mr. Jones and I would like those
2 medical records and we have been waiting to do the
3 deposition -- we have discussed this in the past -- until after
4 I have received those medical records.

5 THE COURT: You have told me that, that is correct.

6 MS. DECASTRO: We are still waiting for those. So
7 plaintiff has not yet been deposed, but I can try to see
8 Horizon Health -- or it is a new place now, but I will speak to
9 them to see what the situation is so we can get the deposition
10 in as soon as possible.

11 THE COURT: OK. Let me talk to both of you on this
12 issue.

13 Is it easier or is it possible that you can prepare a
14 form order for me to sign that Horizon would respond to?

15 MS. DECASTRO: Yes, your Honor. I was actually
16 thinking the same thing, because if we have plaintiff -- I will
17 send your Honor a so-ordered subpoena or a subpoena for the
18 Court's signature endorsement.

19 THE COURT: OK. Mr. Jones, do you understand that
20 what we are trying to do is to hasten the production of these
21 medical records? Are you comfortable, are you authorizing me,
22 or at least not objecting, to my issuing an order to get those
23 records so that we can have your deposition?

24 MR. JONES: No, your Honor. That would be quite
25 helpful because I have been trying to get a copy of the records

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Speakerphone Conference

1 as well and I seem to have failed miserably, so I will --

2 THE COURT: I can promise you no better success, but
3 certainly I'll sign whatever appropriate order is presented to
4 me for those records.

5 MR. JONES: OK.

6 THE COURT: All right.

7 MS. DECASTRO: OK.

8 THE COURT: All right. Ms. Decastro, thank you for
9 reminding me of that.

10 All right. Anything else from either of you?

11 MR. JONES: Just one question, your Honor. The
12 application for pro bono, you told me that I may be able to
13 apply. When is there going to be a deadline, if any, that
14 after that point there won't be an application made or an
15 application wouldn't be accepted by the Court?

16 THE COURT: You can make the application at any time.
17 I will consider it. The thing that you just have to know, sir,
18 is that there are many people who seek pro bono counsel and not
19 enough pro bono counsel for all of those people. So I can
20 guarantee you nothing, sir.

21 MR. JONES: Right. Well, the previous pro bono issue
22 that we had -- that the Court had granted an attorney, Winston
23 & Strawn.

24 THE COURT: Strawn, yes.

25 MR. JONES: Right. And they had litigated the issue,

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Speakerphone Conference

1 the Federal Rule of Civil Procedure Rule 8 issue --

2 THE COURT: Yes.

3 MR. JONES: -- as to the pleading, and you had
4 inquired with them would they be willing to do any further pro
5 bono work. And, you know, at that time they were unavailable,
6 and I believe that there has always been communication with
7 them. Could that possibly be an avenue which could be
8 explored?

9 THE COURT: I will speak with our pro bono coordinator
10 to speak with the particular attorney at Winston & Strawn with
11 whom you dealt, and if they are available, then I will let you
12 know.

13 MR. JONES: OK, your Honor.

14 THE COURT: All right. Anything else, Mr. Jones?

15 MR. JONES: No. That's it.

16 THE COURT: Thank you.

17 Ms. Decastro, anything else?

18 MS. DECASTRO: That's it, your Honor. Thank you, your
19 Honor.

20 THE COURT: Again, thank you both.

21 MS. DECASTRO: Have a good day.

22 THE COURT: Bye-Bye.

23 MR. JONES: Thank you. Bye-bye.

24
25 - - -